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NOV 03 2011

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

LANCASTER COUNTY
CLERK

IN THE MATTER OF FIXING THE DATE,)
TIME AND PLACE FOR A PUBLIC)
HEARING REGARDING A REQUEST)
TO VACATE A PORTION OF A PORTION OF)
NORTHWEST 12TH STREET BETWEEN WEST)
RAYMOND ROAD AND WEST BRANCHED)
OAK ROAD, SUCH PORTION BEGINNING)
AT A POINT 575 FEET NORTH OF THE)
SOUTHWEST CORNER OF THE)
NORTHWEST QUARTER, SECTION 34,)
TOWNSHIP 12 NORTH, RANGE 6 EAST OF)
THE 6TH PRINCIPAL MERIDIAN, THENCE)
NORTH ENDING AT A POINT 775 FEET)
NORTH OF SAID SOUTHWEST CORNER)
OF SAID NORTHWEST QUARTER,)
LANCASTER COUNTY, NEBRASKA)

RESOLUTION NO. R-11-0083

WHEREAS, the Board of County Commissioners of Lancaster County, Nebraska, ("the Board"), pursuant to Neb. Rev. Stat. §39-1722, received a report from the Lancaster County Engineer and the Lincoln-Lancaster County Planning Department regarding the vacation or abandonment of a portion of Northwest 12th Street between West Branched Oak Road, and West Raymond Road, such portion beginning at a point 575 feet north of the Southwest corner of the NW1/4, Section 34, Township 12 North, Range 6 East of the 6th Principal Meridian, thence north ending at a point 775 feet north of said Southwest corner of said NW1/4, Lancaster County, Nebraska; and

WHEREAS, the report from the Lancaster County Engineer is provided in Attachment "A", which is attached hereto and incorporated by this reference; and

WHEREAS, the report from the Lincoln-Lancaster County Planning Department is provided in Attachment "B", which is attached hereto and incorporated by this reference.

NOW, THEREFORE, BE IT RESOLVED, by the Board as follows:

1) That a public hearing on the vacation of the aforesaid described road is hereby set for the 6th day of December, 2011, at 9:30 a.m., or as soon thereafter as is practicable, in the City-Council Chambers in the City-County Building, 555 South 10th Street, Lincoln, Lancaster County, Nebraska.

2) That the Lancaster County Clerk should be and hereby is directed to publish this resolution once a week for three consecutive weeks in a legal newspaper of the County and is further directed where possible to send copies of this resolution, either by registered or certified mail, to the owners of the land abutting on or adjacent to the portion of the road to be vacated, by mailing the same to the last known address of such owner not less than two weeks in advance of the above-referenced hearing date.

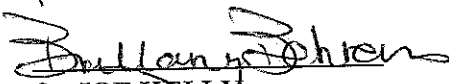
DATED this 8 day of November, 2011, at the City County Building, Lincoln, Lancaster County, Nebraska.

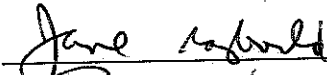


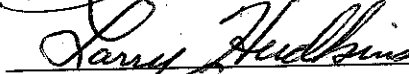

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM

this 8 day of

Nov, 2011.


for JOE KELLY
County Attorney

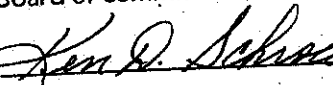






LANCASTER
COUNTY
ENGINEERING

Don R. Thomas
County Engineer

Kenneth D. Schroeder - Deputy
County Surveyor

DEPARTMENT

DATE: November 3, 2011
TO: Lancaster County Board of Commissioners
FROM: Ken D. Schroeder 
County Surveyor
SUBJECT: RESOLUTION R-11-0076
STUDY TO VACATE A PORTION OF NW 12TH STREET
BETWEEN WEST BRANCHED OAK ROAD AND
WEST RAYMOND ROAD

Pursuant to Resolution R-11-0076, this office has reviewed the request to vacate a portion of NW 12th Street between West Branched Oak Road and West Raymond Road, such portion beginning at a point 575 feet north of the SW corner of the NW¹/₄, Section 34, Township 12 North, Range 6 East, of the 6th Principal Meridian, Lancaster County, Nebraska; thence north ending at a point 775 feet north of the SW corner of the NW¹/₄ of said Section 34.

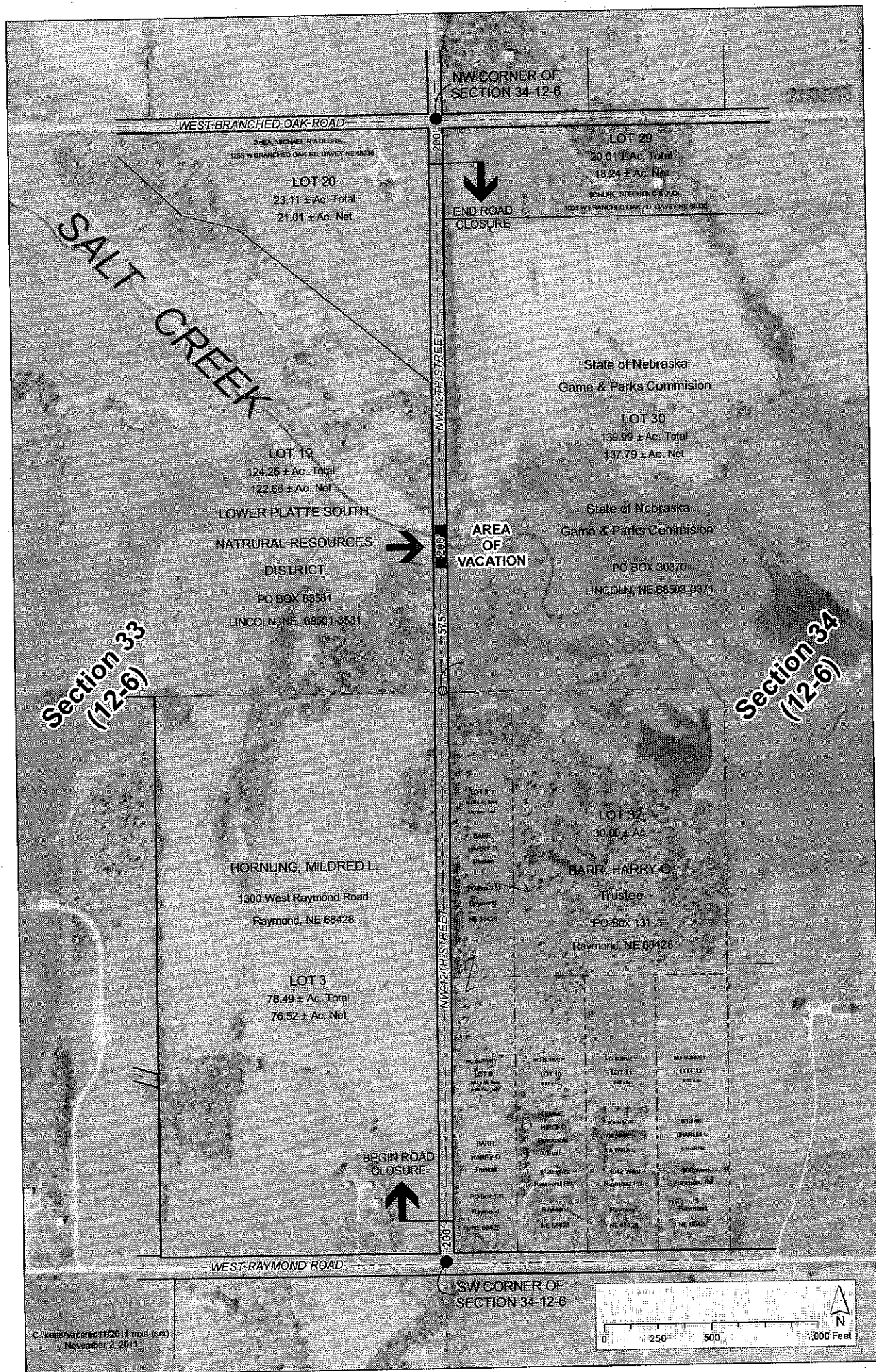
This office would offer the following comments regarding proposed vacation:

- 1) NW 12th Street at this location, also known as County Road #1214, is a petitioned road with 66 feet of statutory road right-of-way easement and was ordered opened and located by final action on October 27, 1893.
- 2) The road surface is presently dirt and there is a bridge over Little Salt Creek within the area of this vacation. The road itself could be described as passable in good weather and the maintenance received would be described as minimal. Bridge #C-172, a 16'x45' wood deck bridge, is structurally deficient and functionally obsolete and upon road vacation, bridge decking and super-structure removal is planned.
- 3) NW 12th Street to be closed for public use between West Branched Oak Road and West Raymond Road, such closure beginning at a point 200 feet north of the SW corner of said Section 34; thence north ending at a point 200 feet south of the NW corner of said Section 34, excepting the portion to be vacated.
- 4) This office has no objections to this request and would recommend approval of the road vacation and closure as outlined in attached "settlement agreement between United States Fish and Wildlife Service and Lancaster County, Nebraska" (Contract C-11-0530).

Enclosures

cc: Sara Hartzell, Planning Department
Tom Fox, Deputy County Attorney

KDS/bml
Barbi/Vacation/Resolution R-11-0076.Mem



C-11-0530

RECEIVED

SETTLEMENT AGREEMENT BETWEEN
UNITED STATES FISH AND WILDLIFE SERVICE
AND
LANCASTER COUNTY, NEBRASKA

SEP 16 2011

LANCASTER COUNTY
CLERK

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the United States Fish and Wildlife Service, hereinafter referred to as "the Service", and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "the County."

WHEREAS, the Service and the County, (collectively, "Parties"), have a dispute over alleged take of Salt Creek tiger beetles and alleged destruction of designated critical habitat resulting from the alleged placement of fill on or about July 28, 2010, on property, abutting a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road in Lancaster County, Nebraska, which is a Category I Saline Wetland located at Little Salt Springs, and is the area designated on April 6, 2010, as Unit 1, Little Salt Creek North, within designated critical habitat of the Salt Creek tiger beetle.

WHEREAS, pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq (ESA), the Salt Creek tiger beetle has been listed in 50 C.F.R. § 17.11 as an endangered species since October 6, 2005 (70 FR 58335). The ESA and its implementing regulations at 50 CFR Part 17 prohibit taking, attempting to take, soliciting another to take or causing the taking of endangered and threatened species of wildlife. 16 U.S.C. §§ 1538(a)(1)(B) and 1538(a)(1)(G) and 1538(g); 50 C.F.R. 17.21(a) and (c).

WHEREAS, Sections 301(a), 309 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319 and 1344 prohibit the placement of fill in a Category I Saline Wetland.

WHEREAS, the Parties, without any admission of liability by the County, enter into this Agreement as a complete and binding resolution and settlement of the allegations against the County and in order to avoid further proceedings or litigation.

IN CONSIDERATION OF THE ABOVE RECITALS, and in consideration of the mutual promises, covenants, terms and conditions set forth hereafter below:

NOW, THEREFORE, IT IS STIPULATED AND AGREED TO BY THE PARTIES AS FOLLOWS:

A. The County agrees:

1. Within ninety (90) days of the Effective Date of this Agreement, the County shall close a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road, such portion beginning at a point 200 feet north of Southwest corner of Section 34, Township 12 North, Range 6 East, thence north ending at a point 200 feet south of the Northwest corner of said Section 34, excepting the portion to be vacated.
2. The closure of Northwest 12th Street near the intersection of Northwest 12th Street and West Branched Oak Road, at a point 200 feet south of the Northwest corner of Section 34, Township 12 North, Range 6 East, will be accomplished using a gate. The County will install and maintain two gates, 14 feet in width, at the intersection of Northwest 12th Street and West Branched Oak Road. Nebraska Game and Parks will pay for the costs of the gates. The County will pay the costs of installation and maintenance of the gates at the intersection of Northwest 12th Street and West Branched Oak Road. The gates may be used to access Northwest 12th Street.
3. The closure of Northwest 12th Street near the intersection of Northwest 12th Street and West Raymond Road, at a point 200 feet north of the Southwest Corner of Section 34, Township 12 North, Range 6 East, will be accomplished by placement of a permanent Type III barrier just north of the private landowner driveway closest to West Raymond Road. The County will pay the costs of installation and maintenance of such barricade. The County in its discretion, and at any time, may reopen any portion of Northwest 12th Street between West Raymond Road and the Southwest corner of the Northwest Quarter, Section 34, Township 12 North, Range 6 East for the purpose of providing landowners, with land adjacent to such portion of Northwest 12th Street, access to their land. If the County chooses to reopen such portion of Northwest 12th Street, then the County may move the road closure point and Type III barrier anywhere up to the Southwest corner of the Northwest Quarter, Section 34, Township 12 North, Range 6 East. Such movement of the road closure point and Type III barrier shall not constitute a breach of this Agreement. The County will be responsible and pay the costs of any movement and re-installation of such barricade.
4. Within ninety (90) days of the Effective Date of this Agreement, the County shall vacate a portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road, such portion beginning at a point 575 feet north of the Southwest corner of the NW1/4, Section 34, Township 12 North, Range 6 East, thence north ending at a point 775 feet north of said Southwest corner of said

NW1/4, Lancaster County, Nebraska. The County shall install permanent Type III barriers on either side of such vacated portion of Northwest 12th Street. The County will pay for the costs of the barricades and their installation. Additionally, the County shall remove the bridge deck of the bridge in the vacated portion of Northwest 12th Street. In removing the bridge deck, the County will coordinate with the Nebraska Game and Parks Commission and the Lower South Platte Natural Resource District in order to avoid any damage to the critical habitat and allow for any habitat restoration the Commission and the District wish to do in the vacated area.

5. The County waives the right to a hearing so long as this Agreement remains in effect, and waives any potential counterclaims against the Service, its law enforcement agents, biologists, attorneys, or other staff so long as this Agreement remains in effect.

B. The Service agrees:

1. In consideration of the County's fulfillment of the terms outlined above, the Service will not impose, or seek to impose, a civil penalty or seek to impose any criminal fine or penalty or seek any civil or criminal action against the County or its officers, members, affiliates, employees, agents or contractors, including but not limited to actions pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq or the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319 and 1344, with respect to the alleged take of Salt Creek tiger beetles or alleged damage to critical habitat by the County or its employees that allegedly occurred on Northwest 12th Street between West Branched Oak Road and West Raymond Road on or about July 28, 2010, or with respect the alleged placement of fill in a Category I Saline Wetland abutting Northwest 12th Street between West Branched Oak Road and West Raymond Road by the County or its employees.
2. The County shall not be responsible or liable for the negligent, intentional, or wrongful acts or omissions of other parties, landowners, or members of the public that access the closed or vacated portions of Northwest 12th Street between West Branched Oak Road and West Raymond Road, or access designated critical habitat of the Salt Creek tiger beetle.
3. The County may remove the bridge deck of the bridge in the vacated portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road.

C. General Provisions

1. The Effective Date of this Agreement shall be the date of the last signature below.
2. If the County fails to perform any of the obligations of this Agreement, the Service may seek enforcement of the terms of this Agreement or may terminate the Agreement. This Agreement tolls any statute of limitations for such civil penalty proceedings, and for any claims of the County, for five years from the Effective Date. In the event the Service institutes any proceeding due to breach of this Agreement, the County shall be entitled to all required notices and opportunities for hearing. Should the Service seek to enforce the ESA violations referenced herein, this Agreement shall not be used as evidence to support or refute such allegations, although it may be used to document the tolling of the statute of limitations and to enforce compliance with its terms.
3. If the Service fails to perform any of the obligations of this Agreement, the County may seek enforcement of the terms of this Agreement or may terminate the Agreement. At anytime the Salt Creek tiger beetle is no longer listed as an endangered or threatened species pursuant to either Federal law or Nebraska State law, the County may terminate this Agreement and reopen the portion of Northwest 12th Street between West Branched Oak Road and West Raymond Road.
4. This Agreement does not authorize under federal law or permitting requirements any take of listed species on the subject property, and any unauthorized taking outside the scope of the allegations herein may be subject to enforcement under the ESA.
5. The provisions of this Agreement shall apply to and be binding upon the Parties and their respective successors and assigns. The undersigned representatives represent that they are fully authorized to enter into this Agreement and to bind their respective Parties thereto.
6. Each Party shall bear its own costs, including but not limited to those incurred in the negotiations and execution of this Agreement, and attorneys' fees.
7. This Agreement constitutes the final and sole agreement between the Parties. Any modifications or amendments of this Agreement shall be in writing and duly executed by the Parties. The time frames in this Agreement may be altered by written agreement of the Parties.

8. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision herein.
9. It is further agreed by the Parties that this Agreement is a complete compromise of a disputed claim and is not to be construed as an admission of liability by any party hereto.
10. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska insofar as it does not conflict with federal law.
11. Unless otherwise terminated pursuant to paragraphs C(2) or (3) above, this Agreement will terminate ten years from the Effective Date.

IT IS SO STIPULATED AND AGREED.

U.S. FISH AND WILDLIFE SERVICE

By: Sharon L. Bennis
(name)

Date 9/29/11

LANCASTER COUNTY, by the
LANCASTER COUNTY BOARD OF
COMMISSIONERS

By: Deb Schorr
Deb Schorr
Chair

Date 9/20/11

MEMORANDUM

DATE: October 25, 2011

TO: County Commissioners

FROM: Sara Hartzell, Planning

RE: Request for Vacation of a portion of NW 12th Street, from W. Branched Oak Road and W. Raymond Road.

CC: Marvin Krout
Steve Henrichsen
Ken Schroeder
Terry Kathe

In accordance with County Resolution #11-0076, the Planning Department has reviewed the County Engineer's request for the vacation of a portion of NW 12th Street, from 575 feet north of the SW corner of the NW quarter of Section 34, Township 12, Range 6, to 775 feet north of that same corner, in Lancaster County, NE, located generally between W. Branched Oak Road on the north and W. Raymond Road on the south.

This County Road is not shown in the Lincoln-Lancaster County Comprehensive Plan Functional Classification Map for future paving or the Future Right-of-Way map for right-of-way acquisition, or as anything other than a local county road. The land adjacent to this portion of road is shown as either Agricultural Stream Corridor, Stream, or Environmental Resources in the Future Land Use map. No changes in land use are anticipated and no increase in traffic is anticipated.

Land to the east is in the ownership of the Nebraska Game and Parks Commission; land to the west is in the ownership of the Lower Platte South Natural Resources District.

This road crosses Little Salt Creek, an area identified as critical habitat for the Salt Creek tiger beetle, a federally endangered species. There are mapped Category I and Category III Saline wetlands adjacent to this segment of roadway. It is anticipated that this area will continue to be preserved as native habitat by purchase or easements.

The abutting property is zoned AG Agriculture.

This vacation would not create any lots or parcels without frontage or access to a county road.

Right-of-Way may or could be used for Norris Public Power lines. There do not appear to be any overhead utility lines along this section line road.

This is a dirt county road and the bridge is functionally obsolete and planned to be

removed upon road vacation. There is no right of way for NW 12th Street for the mile section south of W. Raymond Road. NW 12th Street is a gravel road for four miles north of W. Branched Oak Road then ends at W. Little Salt Road.

There are several north/south section lines in this area that either have dirt roads or have no right-of-way at all. Between the area of NW 40th and N 14th streets from the County line to the Lincoln City Limits, a north/south route can be rather circuitous.

There is one agricultural access approximately 1/4 mile to the north, and one approximately 1/2 mile to the south of this segment.

Although this vacation may add to the limitations in north/south travel in this area of Lancaster County, the habitat protection issues for the Salt Creek tiger beetle in this stretch are considerable. If the vacated road were to be used as or in support of the natural resources, it could be found to be generally in support of the 2040 Comprehensive Plan.

Q:\SHARED\WP\CBR NW 12 & Branched Oak Rd.sxh.wpd